

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JERRY GRIMSLEY,

Appellant,

v.

BENTON-FRANKLIN-WALLA WALLA
COUNTIES AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 78-160

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of three \$100 civil penalties for the alleged violation of respondent's regulations, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David A. Akana (presiding), at an informal hearing in Pasco, Washington on August 29, 1978.

Appellant appeared pro se; respondent appeared through its attorney, Philip M. Rodriguez.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 We notice respondent's Regulation 75-7.

4 II

5 Section 4-040(2) of the regulation prohibits the deposition of
6 particulate matter, including dust, in sufficient quantities as would
7 interfere unreasonably with the use and enjoyment of the property upon
8 which the material was deposited.

9 Section 4-040(5) prohibits the emission of any air contaminant
10 which causes detriment to the health, safety or welfare of any person.

11 Section 4-040(7) requires that reasonable precautions shall be
12 taken to prevent fugitive particulate matter, including dust, from
13 becoming airborne when constructing a building or breaking open the
14 natural cover of the ground.

15 II

16 Appellant is the owner of three residential lots in Benton City,
17 Benton County. At the time of the alleged occurrences, June 8 and 9,
18 1978, appellant was constructing three houses on three lots, in part by
19 using the services of subcontractors. Each lot was serviced with water,
20 but on June 8 and 9, the water to one of the lots was not available.
21 At an earlier time, appellant's agent removed the natural cover of the
22 ground to enhance the appearance of the homes in preparation for sale.

23 III

24 Complainant resides in a house across the street from the appellant's
25 lots. She complained to respondent of dust coming from appellant's lots
26 on June 7, 8 and 9, 1978. Dust, some of which came from appellant's

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1 lots, was blown and deposited on and in complainant's home. Such dust
2 unreasonably interfered with the complainant's use and enjoyment of her
3 property and caused a detriment to the welfare of complainant. As a
4 result of her complaint, respondent issued a notice of violation and a
5 \$100 civil penalty, for each of three lots, for which \$50 of each penalty
6 was suspended for twelve months. Each notice of violation alleged
7 violations of Sections 4-040(2)(5) and (7).

8 IV

9 Appellant applied water to the lots in question on June 8 as a
10 result of a communication from respondent regarding fugitive dust.
11 Appellant also arranged for a neighbor to apply water to the lots on
12 June 9 which apparently was not done. On June 9, a large wind storm
13 occurred over the area including Benton City and the Tri-Cities.

14 We find that appellant took precautions which were reasonable at
15 the time taken, and would ordinarily have prevented particulate matter
16 from becoming airborne on June 8 and June 9.

17 V

18 Any Conclusion of Law which should be deemed a Finding of Fact is
19 hereby adopted as such.

20 From these Findings the Board comes to these

21 CONCLUSIONS OF LAW

22 I

23 Appellant did not violate Section 4-040(7) of respondent's
24 regulation. Appellant did violate Section 4-040(2) and (5) of Regulation
25 75-7 on June 8 and 9, 1978. Accordingly, the three civil penalties
26 should be affirmed.

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1 This being appellant's first violations under the Clean Air Act,
2 and it being unlikely for such violations to occur in the future inasmuch
3 as the instant construction terminates his home construction adventure,
4 we feel that the fines should be suspended.

5 II

6 Any Finding of Fact which should be deemed a Conclusion of Law
7 is hereby adopted as such.

8 From these Conclusions the Board enters this


9 ORDER

10 Each of the three \$100 civil penalties is affirmed, but any payment
11 of each fine is totally suspended, on condition that appellant not
12 violate respondent's regulations for a period of 12 months.

13 DATED this 7th day of September, 1978.

14 POLLUTION CONTROL HEARINGS BOARD

15 
16 DAVE J. MOONEY, Chairman

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18 CHRIS SMITH, Member

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20 DAVID A. AKANA, Member

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CONCLUSIONS OF LAW AND ORDER